

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHERYL HALL, et al.,

Plaintiffs,

v.

AT&T CORP.,

Defendant.

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Case No. 3:04-cv-433 DRH

ORDER

Currently pending before the Court is Virginia P. Brennan's Motion to Substitute Party and Suggestion of Death of Plaintiff Edward Brennan (Doc. 262). This motion is **GRANTED**.

BACKGROUND

Plaintiff Edward Brennan was a named Plaintiff in this action which alleged that Defendant AT&T collected erroneous charges against the named Plaintiffs in violation of the Federal Communications Act and Illinois consumer law. After extensive discovery and motion practice, the parties reached a tentative settlement agreement in November 2007 (Doc. 259).

According to affidavits of Edward Brennan's attorney and his wife, Virginia P. Brennan, Edward Brennan died on October 11, 2007. Virginia P. Brennan now seeks to be substituted for her late husband Edward Brennan as a named plaintiff and class representative in the action. Defendant has not opposed this motion, and the time for doing so has expired.

ANALYSIS

Federal Rule of Civil Procedure 25(a)(1) states:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative.

Substitution of a party is within the discretion of the trial court. See Otis Clapp & Son, Inc. V.

Filmore Vitamin Co., 754 F.2d 738, 743 (7th Cir. 1985).

Virginia Brennan argues that her late husband's claims are not extinguished by his death because they are remedial, not penal, in nature. Under federal common law, "actions which are penal in nature do not survive the death of a party." Khan v. Grotnes Metalforming Systems, Inc., 679 F.Supp 751, 756 (N.D. Ill. 1988). Remedial claims--those that seek compensation for past wrongs--are not extinguished by the death of the party. Id.

CONCLUSION

Due to the nature of this action, the Court finds, therefore, that Edward Brennan's claims are not extinguished by his death. Accordingly, the Motion to Substitute Party (Doc. 262) is **GRANTED**. Virginia P. Brennan shall be substituted for Edward P. Brennan as a Plaintiff in this action.

IT IS SO ORDERED.

DATED: May 23, 2008

s/ Donald G. Wilkerson
DONALD G. WILKERSON
United States Magistrate Judge